

WEST VALLEY CITY, UTAH

ORDINANCE NO. _____

Draft Date: 12/21/09; 1/7/10
Date Adopted: _____
Date Effective: _____

AN ORDINANCE AMENDING SECTIONS 7-1-103, 7-6-1102, 7-9-104, 7-13-102, 7-14-202, 7-15-102, AND ENACTING SECTION 7-15-106 OF TITLE 7 OF THE WEST VALLEY CITY MUNICIPAL CODE REGARDING THE LOCATION OF SEXUALLY-ORIENTED BUSINESSES.

WHEREAS, Title 7 of the West Valley City Code regarding the location of sexually-oriented businesses needs to be updated, as those sections have not been revised since 1993 and do not reflect changes in the case law; and

WHEREAS, because the sexually-oriented business provisions of Title 17 were recently updated, the Title 7 provisions need to be updated to reflect the Title 17 updates and revisions; and

WHEREAS, sections of Title 7 related to sexually-oriented businesses required revision to refine and clarify the meaning and applicability of certain provisions; and

WHEREAS, pursuant to Title 17, sexually-oriented business means outcall service businesses, adult businesses, semi-nude entertainment businesses, semi-nude dancing agency businesses, and service-oriented escort bureaus; and

WHEREAS, for the purposes of Title 7, sexually-oriented businesses are either entitled to First Amendment protection because of the on-site expressive elements inherent in the business; or not entitled to First Amendment protection because there are no expressive elements on-site; and

WHEREAS, outcall service businesses and service-oriented escort bureaus do not have any expressive elements on-site of the licensed premises and, therefore, are not protected by the First Amendment; and

WHEREAS, because a First Amendment analysis is not applicable to regulations for outcall service businesses and service-oriented escort bureaus, the standard for Title 7 regulations of the location of these businesses is “reasonably debatable”; and

WHEREAS, the Planning Commission recommends to the City Council that outcall service businesses and service-oriented escort bureaus be located in the Heavy Manufacturing areas designated in the General Plan, with certain distance requirements from schools, parks, religious institutions, libraries, and high-image arterials for the following reasons:

- a. One of the goals of the City’s General Plan is to “improve and promote a positive image of West Valley City.”
- b. Outcall service businesses and service-oriented escort bureaus negatively impact the image and perception of the area in which they are located.

- c. Outcall service businesses and service-oriented escort bureaus are not walk-in businesses and do not need frontage to attract patrons. As such, these businesses are rarely structured for frontage.
- d. The nature of outcall service businesses and service-oriented escort bureaus is not a use that is compatible with places where minors are likely to congregate.
- e. The Heavy Manufacturing areas designated in the General Plan are less traveled than the Light Manufacturing areas.
- f. Locating this use in the Heavy Manufacturing areas will have the least amount of negative impact on the City's image because this area is traveled relatively infrequently compared to the rest of the City.
- g. This use will not be adversely affected by a lack of frontage or visibility. Frontage space along high-image arterials should be reserved for businesses structured to attract walk-in patrons.
- h. The Heavy Manufacturing areas are not areas where minors are likely to congregate.

WHEREAS, the City Council has reviewed the recommendation of the Planning Commission for the location and restrictions of outcall service businesses and service-oriented escort bureaus, as well as the reasons for the recommendations; and

WHEREAS, the City Council finds that the reasons set forth by the Planning Commission for the location of outcall service businesses and service-oriented escort bureaus are reasonable and incorporates those reasons herein as legislative findings; and

WHEREAS, the City Council accepts the recommendation of the Planning Commission regarding the location and distance restrictions for outcall service businesses and service-oriented escort bureaus; and

WHEREAS, adult businesses, semi-nude entertainment businesses, and semi-nude dancing agency businesses all have on-site expressive elements, which entitle those businesses to First Amendment protection; and

WHEREAS, regulations for businesses entitled to First Amendment protection must be narrowly tailored to serve a substantial government interest; and

WHEREAS, the City has a substantial governmental interest in preserving the health, safety and general welfare of its citizens by protecting its citizens from criminal activity and the spread of sexually-transmitted disease; and

WHEREAS, the City has a substantial governmental interest in protecting its citizens from decreasing property values; and

WHEREAS, the City has a substantial governmental interest in preserving the quality of urban life; and

WHEREAS, the sexually-oriented businesses with on-site expressive elements cause secondary effects on the surrounding community as confirmed in several studies commissioned by different cities; and

WHEREAS, members of the Planning Commission and City Council have reviewed the following studies:

- a. An Analysis Of The Effects Of SOBs On The Surrounding Neighborhoods In Dallas, Texas, As Of April 1997—prepared by Peter Malin, MAI. (herein the “Dallas Study”)
- b. Adult Entertainment Study—City of New York—prepared by the Department of City Planning, November 1994. (herein the “New York Study”)
- c. A Report On The Secondary Impacts Of Adult Use Businesses In The City Of Denver—City of Denver—prepared by City administration of Denver, January 1998. (herein the “Denver Study.”)

WHEREAS, the New York Study found that adult uses create “dead zones” in commercial areas that shoppers avoid; and

WHEREAS, the New York Study found that the conclusion must be drawn that the overall effect on surrounding properties [by adult uses] is considered to be negative; and

WHEREAS, the New York Study found that there is a statistically significant correlation between the location of adult businesses and neighborhood deterioration; housing values were significantly lower in areas with adult uses; and

WHEREAS, the Denver Study found that criminal activity, primarily drug dealing, prostitution, public indecency, and sexual assault, is the most common secondary impact of adult uses; and

WHEREAS, the Denver Study found that litter, noise, and traffic problems are also common secondary impacts of adult uses; and

WHEREAS, the Denver Study found that adult uses have a significant impact on the property values of single family homes; and

WHEREAS, the Dallas study found that community residents fear the consequences of potential proliferation and concentration of adult uses in traditionally neighborhood-oriented shopping areas and view and appearance of one or more of these uses as a deterioration in the quality of urban life; and

WHEREAS, the Supreme Court found that the City may rely on the studies reviewed by the Planning Commission and City Council provided that, “whatever evidence that the city relies upon is reasonably believed to be relevant to the problem that the city addresses.” (*City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S. Ct. 926 (1986)); and

WHEREAS, the Planning Commission and City Council find that the City desires to prevent criminal activity; the spread of disease; litter; noise; traffic congestion; neighborhood deterioration; decreasing property values, both commercial and residential, all of which are problems addressed in the New York, Dallas, and Denver Studies; and

WHEREAS, some areas of the City, particularly in the Manufacturing Zone, are in economic decline and urban blight and criminal activity have steadily increased; and

WHEREAS, many areas of frontage along the City’s high-image arterials are vital to the City’s redevelopment and city revitalization efforts; and

WHEREAS, the City desires to enact ordinances that will reduce the negative secondary impacts of sexually-oriented businesses upon other business uses, both public and semi-public uses; insure that

these businesses do not impede redevelopment and neighborhood revitalization efforts; avoid these businesses in heavily traveled pedestrian areas; and

WHEREAS, documented secondary effects provide a legal basis for time, place, and manner restrictions for sexually-oriented businesses with on-site expressive elements because the mitigation of the secondary effects is unrelated to the suppression of speech; and

WHEREAS, the distance requirements for sexually-oriented businesses from areas where minors are likely to congregate, from residential and agricultural zones, and from other sexually-oriented businesses are already codified and shall not be revised further in this proposed ordinance; and

WHEREAS, based on the foregoing, the Planning Commission recommends, and the City Council accepts the recommendation, that sexually-oriented businesses be located in the Heavy Manufacturing areas designated in the General Plan and subject to the additional distance restrictions related to minors, other sexually-oriented business, residential and agricultural zones and high-image arterials; and

WHEREAS, the proposed location and additional distance requirements for sexually-oriented businesses leave sufficient reasonable alternative channels for communication in accordance with *Daytona Grand Inc. v. City of Daytona Beach, Florida*, 490 F.3d 860, (11th Cir 2007); and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to amend Sections 7-1-103, 7-6-1102, 7-9-104, 7-13-102, 7-14-202, 7-15-102, and enact Section 7-15-106 of Title 7 of the West Valley City Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Valley City, Utah, as follows:

Section 1. Repealer. Any provision of the West Valley City Municipal Code found to be in conflict with this Ordinance is hereby repealed.

Section 2. Amendment. Sections 7-1-103, 7-6-1102, 7-9-104, 7-13-102, 7-14-202 and 7-15-102 of Title 7 of the West Valley City Municipal Code are hereby amended as follows:

7-1-103. DEFINITIONS.

(176) "School" means:

- a. An institution recognized as satisfying the requirements of public education and having an academic curriculum similar to that ordinarily given in public schools. This definition does not apply to home occupations represented as schools, i.e., dance, music, crafts, child nurseries, etc.
- b. For purposes of sexually-oriented businesses, "school" means an institution of learning or instruction primarily catering to minors, whether public or private, who is licensed as such a facility by either the City or the State. This definition shall include, but not be limited to, preschools, kindergartens, elementary schools, junior high schools, middle high schools, senior high schools, or any special institution of learning under the jurisdiction of the State Department of Education, but not including trade schools, charm

schools, dancing schools, music schools or similar limited schools, nor public or private universities or colleges.

7-6-1102. PERMITTED USES.

The following are permitted uses in the Manufacturing Zone. No other permitted uses are allowed, except as provided in Section 7-2-115:

- (1) All permitted and conditional uses listed in commercial zones and the Agricultural Zone, except residential uses, and those uses listed below as conditional uses.
- (2) Manufacturing uses which include production, processing, cleaning, testing and distribution of material goods and services, except uses listed below as conditional uses.
- (3) A caretaker's residence which is incidental and integrated into a primary building in which the primary use of the site is housed.
- (4) Sexually-oriented businesses, as defined in Title 17, are permitted uses in the Heavy Manufacturing areas designated in the General Plan and subject to the restrictions in Chapter 15 of this Title.
- ~~(4)~~(5) Uses customarily accessory and incidental to a principal use listed above.

7-9-104. COMPUTATION OF OFF-STREET PARKING SPACES.

The matrix on the following pages contains the minimum parking requirements for specific uses. The maximum percentage allowed for compact spaces is also given. Special requirements for each use are provided under the "Notes" column where appropriate.

If, in the application of the requirements of this Title, a fractional number is obtained, any fraction will be disregarded.

The number of parking spaces required by these schedules may be reduced or increased as a condition of the development review by the Planning Commission for conditional use applications or as approved by the Zoning Administrator or designee for permitted uses if it can be demonstrated through a parking study that the proposed use(s) would have a parking demand less than or in excess of the requirements stated in this Chapter. This parking study must be validated through empirical evidence, which is acceptable to the Zoning Administrator or designee, from similar uses. Parking studies which include the use of alternative modes of transportation to reduce the number of parking spaces required must be prepared by an engineer. Appeals of the decision of the Zoning Administrator are made to the Board of Adjustment as designated in Section 7-18-105.

USE	MINIMUM OFF-STREET PARKING REQUIREMENT	MAX. % COMPACT USES ALLOWED	NOTES
RESIDENTIAL			
Handicapped or Group Home Housing	A minimum of 2 parking spaces plus 1 parking space for every 4 handicapped persons.	None	The Planning Commission may vary off-street parking needs in relation to the number of staff/employees required and the special needs of the residents.

USE		MINIMUM OFF-STREET PARKING REQUIREMENT	MAX. % COMPACT USES ALLOWED	NOTES
	Mobile Home Dwelling within a Mobile Home Park	2 spaces per unit.	None	Parking one behind the other is permitted provided sufficient visitor parking is located within the park.
	Single Family Dwelling Two Family Dwelling Multiple Family Dwelling	2 spaces per unit.	None	Parking one behind the other arrangements for all required parking is prohibited, except for visitor parking for multiple family dwellings. Minimum off-street parking shall not be located within the minimum required front yard setback.
	Multiple Family Units: Studio Units One Bedroom Units Two Bedroom Units Three Bedroom Units	1.3 spaces per unit 1.5 spaces per unit 1.75 spaces per unit 2 spaces per unit	25%	If the Planning Commission finds that reducing the 2 parking spaces per unit ratio is not detrimental to the surrounding area and will enhance the proposed development, it may reduce the parking ratio to these minimums for multi-family units in developments with at least 40 units.
HEALTH SERVICES				
	Churches, auditoriums, Assembly Halls, Mortuaries and other places of public assembly	1 space for each 6.5 feet of linear pew or 3.5 seats in an auditorium provided, however, that where a church building is designed or intended to be used by 2 congregations at the same time, an additional 50% of the minimum spaces required shall be provided.		
	Day care, Preschool and Nursery Schools	1 space per 300 square feet of gross floor area.	25%	If drop-off facilities are contemplated, they shall be designed to provide a continuous flow of vehicles to safely load and unload children without stacking on public streets. When drop-off facilities are provided, a reduction to the number of spaces required may be reduced as per Section 7-9-104.
	Hospitals	2 spaces per bed in the total facility.	25%	A traffic study may be required. Accessory units and clinics will be calculated as outlined in this Chapter.
	Medical, Dental Offices and Clinics	1 space per 200 square feet of gross floor area.	25%	
	Nursing Homes	1 space per 2.5 beds for nursing and convalescent homes.	None	
	Veterinarians and Veterinary Hospitals	1 space per 200 square feet of gross floor area excluding kennel boarding area.	25%	
ENTERTAINMENT AND RECREATION				
	Amusement Center	1 space per 100 square feet of floor space.	25%	
	Bowling Alleys and Billiard Halls	5 parking spaces per alley and 2 spaces per billiard table.	25%	Ancillary uses such as restaurants shall comply with the specific requirements outlined in this Chapter.

USE		MINIMUM OFF-STREET PARKING REQUIREMENT	MAX. % COMPACT USES ALLOWED	NOTES
	Commercial Riding Stables	1 space per 5 horses boarded on site.	None	
	Golf Courses Miniature Golf Courses Driving Ranges	6 spaces per hole 3 spaces per hole 1 space per hole	25%	Ancillary uses such as commercial pro shops and restaurants shall provide sufficient parking as required in this Chapter.
	Health Spas and Sports Complexes	1 space per 200 square feet of gross floor area.	25%	Ancillary uses such as restaurants to provide parking as required by this Chapter.
	Movie Theaters	1 space per 4 seats.	25%	
	Tennis, Handball and Racquetball facilities	3 spaces per court.	25%	Ancillary uses to provide sufficient additional parking as required by this Chapter.
COMMERCIAL				
	Auto Repair, Service and Auto Parts Sales	3 spaces for each service bay plus 1 space for every 300 square feet of retail sales area.	25%	If towing service is provided, sufficient area shall be located on-site for temporary storage of vehicles and the tow truck.
	Auto Sales	1 customer parking space per 400 square feet of gross floor area in the automobile sales area or 5 parking spaces, whichever requirement is greater.	25%	
	Hotels and Motels	1 space per room where no cooking facilities are provided. Living units with cooking facilities shall provide 1.25 parking spaces per unit.	25%	Ancillary uses such as restaurants or retail shops shall provide additional parking as identified for the specific use as required by this Chapter.
	Lumber Yards and Plant Nurseries	1 space per 300 square feet of indoor floor sales area.	25%	
	Professional Offices and Banks	1 space per 250 square feet of gross floor area for the first 20,000 square feet plus 1 space per 300 square feet of gross floor area in excess of 20,000 square feet.	25%	Drive up windows shall provide sufficient stacking room and sufficient area for 4 spaces from teller window. The Planning Commission may consider a reduction in parking stall width to 8'-6" for retrofits of existing warehouse buildings upon application as a conditional use.
	Restaurants and Fast Food Establishments	1 space per 100 square feet of gross floor area or 1 space for each 4 seats whichever is greater plus .5 space for each employee on the highest employment shift with a minimum of 5 spaces for employee parking.	25%	Drive up windows shall provide sufficient stacking room and sufficient area for 4 spaces from place of order and 4 spaces from pick up window.
	Retail - Intensive General Merchandising including shopping centers and Adult Businesses.	1 space per 250 square feet of gross floor area for the first 20,000 square feet plus 1 space per 300 square feet of gross floor area in excess of 20,000 square feet.	25%	

USE		MINIMUM OFF-STREET PARKING REQUIREMENT	MAX. % COMPACT USES ALLOWED	NOTES
	Retail - Less Intensive: Furniture, Carpet	1 space per 400 feet of gross floor area.	25%	
	Sports Stadiums, Concert Venues, and Auditoriums (including school auditoriums).	1 space/4 seats.	25%	
	Dance Halls, Concert Halls, Club Licensees, Reception Centers, Semi-Nude Entertainment Businesses and other places of public assembly.	1 space for each 50 square feet of gross floor area.	25%	
	Swimming Pools (Commercial and Public)	1 space per each 10 persons based on capacity load.	25%	
INDUSTRIAL				
	Detention Facility/Jail	2 spaces per 3 employees, 1 space per 20 inmates and 1 space per each service vehicle stored on site.		Parking spaces must be adequately sized for the vehicles being stored or parked on site.
	Manufacturing	1 space per 500 square feet of gross floor area devoted to manufacturing plus required parking for business vehicles	30%	Ancillary uses such as offices are to provide parking as required by this Chapter.
	Open Storage Uses in an approved industrial area	1 space per 5,000 square feet of open area being utilized for storage exclusive of access, landscaping, etc.		
	Research and Development	1 space per 350 square feet of gross floor area plus the required parking for business vehicles.	30%	
	Truck Transfer Companies	1 space for each 2 employees plus parking for each truck associated with the business.		
	Warehousing	1 space per 1,000 square feet of gross floor area for the first 20,000 square feet devoted to warehouse plus the required parking for square footage devoted to other uses. 1 space per 2,000 square feet for the second 20,000 square feet. 1 space per 2,500 square feet of floor area in excess of 40,000 square feet.		No conversions of any portion of a warehouse use to any other use shall be permitted unless the parking requirements for such other uses are met.
OTHER				

USE		MINIMUM OFF-STREET PARKING REQUIREMENT	MAX. % COMPACT USES ALLOWED	NOTES
	Parking Spaces for uses not specified			The number of parking spaces for uses not specified herein shall be determined by the Zoning Administrator being guided, where appropriate, by the requirements set forth herein for uses which are similar to the use not specified. Appeals to the decision of the Zoning Administrator are made to the Board of Adjustment as designated in Section 7-18-105.

7-13-102. APPLICABILITY.

Pursuant to the recommendations of the General Plan, specific landscaping standards shall be required on the following high-image arterial streets:

- (1) Redwood Road
- (2) 3500-3300 South (UT 171)
- (3) 5600 West
- (4) 2700 South (Parkway Blvd and Lake Park Blvd)
- (5) 2100 South Freeway (UT 201)
- (6) Bangerter Highway
- (7) I-215 Freeway
- (8) 4100-3900 South
- (9) 4700 South
- (10) 3100 South
- (11) 3200 West
- (12) 3600 West
- (13) 2700 West
- (14) 5400 South
- (15) 6200 South

7-14-202. APPLICABILITY.

- (1) The following standards are applicable to commercial and office buildings and projects in Business/Research Park (B/RP), Mixed Use (MXD), Residential Business (RB), Residential Multi-Family (RM), Neighborhood Commercial (C-1), General Commercial (C-2), Transitional Commercial (C-3), and Manufacturing (M) zoning districts and commercial components of Planned Unit Developments (PUD's). The following standards are applicable to buildings and projects for sexually-oriented businesses. Unless otherwise stated in this Section, Churches, warehouses and uses allowed only in the M zone are specifically excluded.
- (2) The following standards are applicable to new development, redevelopment, or additions to existing buildings that increase the gross floor area by more than fifty percent.

CHAPTER 7-15

SEXUALLY-ORIENTED BUSINESSES

Sections:

- 7-15-101. Purpose.
- 7-15-102. Location of Businesses - Restrictions.
- 7-15-103. Effect on Non-conforming Businesses.
- 7-15-104. Signs.
- 7-15-105. Definitions.
- 7-15-106. Parking.

7-15-101. PURPOSE.

The purpose and objective of this Chapter is to establish reasonable and uniform regulations to prevent the concentration of sexually-oriented businesses or their location in areas deleterious to the City, regulate the signage of such businesses, control the adverse affects of such signage, and prevent inappropriate exposure of such businesses to the community. This Chapter is to be construed as a regulation of time, place, and manner of the operation of these businesses, consistent with the United States and Utah Constitutions.

7-15-102. LOCATION OF BUSINESSES - RESTRICTIONS.

- (1) Outcall services and service-oriented escort services bureaus shall only be permitted in areas zoned M (Manufacturing) and designated Heavy Manufacturing pursuant to the General Plan, subject to the following additional restrictions:

- a. No outcall service or service-oriented escort bureau shall be located:

- i. Within 1,000 feet of any school, public park, library, or religious institution.
 - ii. Within 600 feet of a high-image arterial as defined in Section 7-13-102 and including U-111 Hwy. The distance shall be measured from the right-of-way boundary.

- (2) Sexually-oriented businesses, ~~except outcall services~~, shall only be permitted in areas zoned M (Manufacturing) and designated Heavy Manufacturing pursuant to the General Plan, subject to the following additional restrictions:

- a. No sexually-oriented business shall be located:

- i. Within 1,000 feet of any school, public park, library, or religious institution.
 - ii. Within 1,000 feet of any residential use or any agricultural or residential zoning boundary.
 - iii. Within 600 feet of any other sexually-oriented business, except outcall services.
 - iv. Within ~~350~~600 feet of ~~any gateway corridor~~ a high-image arterial as defined in Section 7-13-102 and including U-111 Hwy. The distance shall be measured from the right-of-way boundary.

- (3) Distance requirements between structures and uses specified in this Section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property boundaries of the school, public park, religious or cultural activity, residential use, or other sexually-oriented business, or from the right-of-way line of a ~~gateway~~ high-image arterial or U-111 Hwy to the structure of the sexually-oriented business.

(4) Distance requirements from zoning districts for this Section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the closest zoning boundary of a residential or agricultural district to the sexually- oriented business structure.

Section 3. Enactment. Section 7-15-106 of the West Valley City Municipal Code is hereby enacted as follows:

7-15-106. PARKING.

Sexually-oriented businesses are subject to the parking requirements in Chapter 9 of this Title.

Section 4. Severability. If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

Section 5. Effective Date. This Ordinance shall take effect immediately upon posting in the manner required by law.

PASSED and APPROVED this _____ day of _____, 2010.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER